



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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DISMISSED FOR LACK OF JURISDICTION: July 15, 2010

CBCA 1876

G & R SERVICE COMPANY, INC.,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

L. Tom Gay, CFO of G & R Service Company, Inc., Evans, GA, appearing for Appellant.

Rebecca A. Saroyan, Office of Regional Counsel, General Services Administration, San Francisco, CA, counsel for Respondent.

Before Board Judges **HYATT**, **GOODMAN**, and **McCANN**.

**McCANN**, Board Judge.

Respondent has filed a motion to dismiss for lack of jurisdiction on the grounds that appellant has not filed a proper claim. We grant the motion.

Background

On September 25, 2008, the parties entered into contract GS-09P-08-KS-M-0082, wherein appellant was to “[i]ninstall GSA-furnished Circuit breakers and ancillary work in accordance with the solicitation documents and line item description.” Appeal File, Exhibit 1 at 3. The work was to be accomplished at two sites in the San Francisco Bay area. *Id.*

Appellant commenced work. In December of 2009, appellant submitted a claim letter dated December 3, 2009. Appeal File, Exhibit 22. In the claim, appellant requests compensation, *inter alia*, for defective drawings and specifications, changes to the contract, and failure by respondent to timely provide clearances. The claim is broken into three parts. In part one appellant requests “[c]ompensation not to exceed \$15,000. . . .” In part two it requests “[c]onsideration not to exceed \$10,000. . . .” In part three it requests [c]onsideration not to exceed \$10,000. . . .”

GSA responded to appellant’s claim letter on December 18, 2009, with a letter requesting that supporting documentation be submitted by appellant, including a detailed cost accounting. Appeal File, Exhibit 23. By letter dated December 31, 2009, appellant informed GSA that it was refusing to provide the information requested. Appeal File, Exhibit 24. On February 2, 2010, sixty days after filing its claim, appellant filed a notice of appeal with the Board on the basis that respondent had failed to issue a decision within the time allotted. Appeal File, Exhibit 27.

### Discussion

This claim arises under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613 (2006). Under the CDA, “[a]ll claims by a contractor against the Government relating to a contract must be in writing and shall be submitted to the contracting officer for a decision.” 41 U.S.C. § 605 (a). Without a proper claim being submitted to the contracting officer and a decision on that claim, this Board lacks jurisdiction. *Reflectone, Inc. v. Dalton*, 60 F.3d 1572, 1575 (Fed. Cir. 1995) (*en banc*); *Sharman Co. v. United States*, 2 F.3d 1564, 1569 (Fed. Cir. 1993).

Under the Disputes clause of the contract, a claim is defined as “a written demand or written assertion by one of the contracting parties seeking as a matter of right the payment of money in a sum certain. . . .” Appeal File, Exhibit 1 at 12; *see also Reflectone*, 60 F.3d at 1575-76 (a claim is a written demand by a party “seeking as a matter of right the payment of money in a sum certain”). Although appellant argues that its claim letter has set forth sum certain amounts, that argument lacks merit. A not to exceed amount is undefined, and not an amount in a sum certain. Appellant’s claim contains three separate parts in “not to exceed” amounts, and the sum of those parts is also not a sum certain. *Sandoval Plumbing Repair, Inc.*, ASBCA 54640, 05-2 BCA ¶ 33,072 (modifying phrases like “no less than,” “not less than,” and “in excess of” do not qualify as a sum certain); *Van Elk, Ltd.*, ASBCA 45311, 93-3 BCA ¶ 25,995 (an approximate amount does not constitute a sum certain). Since appellant’s claim does not request a sum certain, it is not a valid claim. Accordingly, this Board lacks jurisdiction over this appeal.

Decision

Respondent's motion to dismiss is granted. The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

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R. ANTHONY McCANN  
Board Judge

We concur:

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CATHERINE B. HYATT  
Board Judge

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ALLAN H. GOODMAN  
Board Judge